



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 18, 1995

Ms. Mercedes Leal
Senior Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR95-184

Dear Ms. Leal:

On behalf of Harris County (the "county"), you have requested that this office reconsider Open Records Letter No. 95-097 (1995). Your request for reconsideration was assigned ID# 32639. In Open Records Letter No. 95-097 (1995), this office ruled that certain cellular phone information for members of the Harris County Commissioners Court must be released unless the numbers are excepted from disclosure under section 552.117 of the Government Code or sections 552.101 and 552.108, providing you resubmitted the specific statements along with your arguments for withholding them under sections 552.101 and 552.108.

We note that Open Records Letter No. 95-097 (1995) clearly ruled that any telephone numbers that are confidential under section 552.117 may be redacted by the county. Yet, you still argue that the commissioners and the county are concerned about revealing the home telephone numbers of peace officers or county officials who have elected not to have their home telephone numbers disclosed under section 552.024 of the Government Code. We fail to see the need for such concern as we have already directed the county to redact this information. We will not consider any of the arguments that you have made that would relate to these numbers.

You have resubmitted a sample copy of the cellular telephone records in question along with a sample reimbursement form for certain personal telephone calls made by a commissioner for which he reimbursed the county \$2.49. You argue that the fact that the telephone call was reimbursed by the commissioner affects whether the call may be protected under sections 552.101, 552.108, and 552.117 of the Government Code. We disagree.

Section 552.021 provides in part that:

(a) Information is public information if, under a law or ordinance or in connection with the transaction of official business, it is collected, assembled, or maintained:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

The cellular telephone records are public information. The records may be withheld only if they are excepted by one of the sections in subchapter C. Open Records Decision No. 549 (1990) (virtually all information in physical possession of governmental body is subject to Open Records Act, and whether it is excepted from public disclosure depends upon whether it comes within exception listed under subch. C); *see* Open Records Decision Nos. 565 (1990), 535 (1989), 526 (1989), 522 (1989), 517 (1989), 514 (1988), 509 (1988), 508 (1988), 506 (1988), 502 (1988) (all information held by governmental body under Open Records Act is open unless it is excepted from disclosure by one or more of Open Records Act's specific exceptions). Whether the telephone call was reimbursed by a commissioner does not change the requirement that the information must be released unless it comports with one of the act's exceptions.

You have once again raised sections 552.101 and 552.108 of the Government Code. Section 552.108 provides that:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to the incident. Open Records Decision Nos. 474 (1987), 372 (1983). Certain factual information generally found on the front page of police offense reports, however, is public even during an active investigation. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) at 3-4 (listing factual information available to public).

After a file has been closed, either by prosecution or by administrative decision, the availability of section 552.108 is greatly restricted. Open Records Decision No. 320 (1982). The test for determining whether information regarding closed investigations is excepted from public disclosure under section 552.108 is whether release of the records would unduly interfere with the prevention of crime and the enforcement of the law. Open Records Decision No. 553 (1990) at 4 (and cases cited therein). A governmental body claiming the "law enforcement" exception must reasonably explain how and why release of the requested information would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 434 (1986) at 2-3.

You do not indicate that any specific telephone numbers relate to active law enforcement investigations or even inactive law enforcement investigations. The only concern you raise that even remotely relates to law enforcement interest is the concern about releasing peace officers' home telephone numbers. As we stated above, this concern was adequately addressed by Open Records Letter No. 95-097 (1995). Accordingly, you may not withhold any of the requested information under section 552.108 of the Government Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure under the common-law right of privacy as section 552.101 incorporates it, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. art. 6252-17a, § 3(a)(1)). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

Once again, you have made broad statements about the records as a whole. You do not indicate that any one telephone number could be considered highly intimate or embarrassing, nor do we believe that reimbursing the county for a call changes the fact that you have failed to demonstrate that any of the numbers are highly intimate

or embarrassing. Moreover, this office has consistently ruled that home addresses and phone numbers are not "intimate" information; and therefore, no balancing is necessary under the test for section 552.101; this information is not protected as to applicants, probationers, or private citizens. Open Records Decision Nos. 478 (1987), 455 (1987); *see* Open Records Decision No. 554 (1990) (disclosure of person's name, home address, and telephone number is not invasion of privacy). Accordingly, you may not withhold any of the requested information under section 552.101 of the Government Code. Except for those numbers that are confidential under section 552.117, the records must be released in their entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/LBC/tho

Ref: ID# 32639

Enclosures: Submitted documents

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